



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34673704

Date: DEC. 26, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an entrepreneur, inventor, and scientist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. The Director further determined that the Petitioner did not demonstrate his required intent to continue working in the United States in his field. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The Petitioner is an entrepreneur, inventor, and scientist in the field of information and communication technology. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director determined that the Petitioner only satisfied one criterion related to judging at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he also meets the plain language requirements of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (viii), and (ix) related to lesser awards, published materials, original contributions, leading or critical role, and high salary, and asserts that the Director did not fully evaluate the abundance of evidence submitted in support of his eligibility under these criteria.

Upon review, the language in the Director’s decision regarding the evidentiary criteria discussed above, specifically with regard to the criteria relating to published materials and high salary, was copied almost verbatim from the Director’s request for evidence (RFE). Although the Director briefly quotes letters of support submitted by the Petitioner in analyzing his eligibility under the criteria pertaining to original contributions and leading or critical role, there is no specific discussion of the evidence submitted in support of his eligibility under the five claimed criteria nor is there an explanation for the Director’s conclusion that the Petitioner has not satisfied any of these criteria. Moreover, the analysis does not reflect the Director’s consideration of the Petitioner’s claims and evidence submitted in response to the RFE with respect to these five criteria.

Given the amount and type of evidence submitted in support of the Petitioner’s eligibility under the five claimed criteria, both initially and in response to the RFE, we find the Director’s brief analysis did not adequately inform the Petitioner of the reasons for concluding that he did not satisfy these five criteria. Moreover, we note that the Director’s analysis pertaining to the Petitioner’s intent to continue working in his field in the United States is copied virtually verbatim from the RFE, thereby indicating

that the Director did not adequately discuss the Petitioner's evidence as it pertains to this issue or sufficiently explain the basis for this determination.

An officer's written decision must fully explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Because the Director's decision does not specifically address the evidence submitted with the petition or in response to the RFE with respect to the criteria noted above, we will remand the matter.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. The Director should also review the Petitioner's appellate brief, which further discusses the previously submitted evidence submitted in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) as well as his intention to continue working in his claimed field of extraordinary ability pursuant to Section 203(b)(1)(A)(ii) of the Act. If the Director determines that the Petitioner satisfied at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should evaluate, based on the totality of the evidence in the record, whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.